

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHAVEZ SULTHAN YOUNG,

Defendant-Appellant.

UNPUBLISHED

April 16, 2015

No. 320422

Saginaw Circuit Court

LC No. 13-039100-FC

Before: O’CONNELL, P.J., and FORT HOOD and GADOLA, JJ.

GADOLA, J. (*concurring*).

I write separately for the limited purpose of stating that I believe it was clear error¹ for the prosecutor to single out the two jurors on the panel who were nurses and appeal to their medical expertise during closing arguments. By addressing these jurors by name and occupation, the prosecutor essentially urged them to function as medical experts in determining whether the victim’s injury was more consistent with being struck with a gun or being “slammed” on his head, and improperly highlighted these jurors before the rest of the jury panel. Moreover, the law is clear that “[a] prosecutor may not make a statement of fact to the jury that is not supported by evidence presented at trial and may not argue the effect of testimony that was not entered into evidence.” *Unger*, 278 Mich App at 241. At trial, Grice testified that his forehead injury was “a straight line,” but there was no medical evidence presented on the significance of the wound being a straight line. Accordingly, the prosecutor was not permitted to draw inferences regarding what type of harm caused the injury.

¹ The prosecutor’s performance should be characterized as “error” rather than “misconduct” because, as the prosecutor noted in its brief on appeal, the term “misconduct” implies a deliberate violation of a rule or practice or a grossly negligent transgression, while error suggests a technical or inadvertent mistake. See also *People v Cooper*, ___ Mich App ___, ___; ___ NW2d ___ (2015) (“[W]e agree that the term ‘misconduct’ is more appropriately applied to those extreme—and thankfully rare—instances where a prosecutor’s conduct violates the rules of professional conduct or constitutes illegal conduct.”).

In any event, I concur with the outcome reached by the majority because the error was harmless, given that “a curative instruction could have alleviated any prejudicial effect.” *People v Callon*, 256 Mich App 312, 329-330; 662 NW2d 501 (2003).

/s/ Michael F. Gadola